Supreme Court, U.S.
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No. 02-1733

In the Supreme Court of the United States

NATIONAL RIGHT TO LIFE COMMITTEE, INC., ET AL.,
APPELLANTS

v.

FEDERAL ELECTION COMMISSION, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

RESPONSE OF APPELLEES FEDERAL ELECTION COMMISSION, ET AL.

THEODORE B. OLSON
Solicitor General
Counsel of Record

ROBERT D. MCCALLUM, JR.
Assistant Attorney General

PAUL D. CLEMENT
Deputy Solicitor General

MALCOLM L. STEWART
GREGORY G. GARRE
Assistants to the Solicitor General

DOUGLAS N. LETTER
JAMES J. GILLIGAN
MICHAEL S. RAAB
DANA J. MARTIN
Attorneys

Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

LAWRENCE H. NORTON
General Counsel

RICHARD B. BADER
Associate General Counsel

STEPHEN E. HERSHKOWITZ
DAVID KOLKER
Assistant General Counsels
Federal Election Commission
Washington, D.C. 20463

QUESTIONS PRESENTED

In 2002, the President signed into law the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 81. BCRA is designed to address various abuses associated with the financing of federal election campaigns and thereby protect the integrity of the federal electoral process. The questions presented by this appeal are as follows:

1. Whether the limitations on political parties and on federal and state officeholders and candidates imposed by Section 101 of BCRA are constitutional.

2. Whether BCRA's funding limitations and disclosure requirements pertaining to "electioneering communications" are constitutional.

3. Whether appellants' challenge to Section 212 of BCRA, which requires disclosure of certain independent campaign expenditures, is justiciable.

4. Whether Section 212 of BCRA is constitutional.

5. Whether the injunction entered by the district court should have been expressly extended to cover activities occurring outside the District of Columbia.

6. Whether the intervention in this litigation of Members of Congress seeking to defend the constitutionality of BCRA, pursuant to Section 403(b) of the statute, was consistent with Article III of the Constitution.

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RESPONSE OF APPELLEES FEDERAL ELECTION COMMISSION, ET AL.[1]

OPINIONS BELOW

The opinions of the district court are not yet reported.

JURISDICTION

The judgment of the district court was entered on May 2, 2003. Appellants' notices of appeal (J.S. App. 1a-2a, 69a-70a) were filed on May 7, 2003, and May 28, 2003. Appellants' jurisdictional statement was filed on

[1] This response is filed on behalf of the Federal Election Commission (FEC) and David M. Mason, Ellen L. Weintraub, Danny L. McDonald, Bradley A. Smith, Scott E. Thomas, and Michael E. Toner, in their capacities as Commissioners of the FEC; John Ashcroft, in his capacity as Attorney General of the United States; the United States Department of Justice; the Federal Communications Commission; and the United States of America. Those parties are appellants in *Federal Election Commission* v. *Mitch McConnell, United States Senator*, No. 02-1676.

May 28, 2003. The jurisdiction of this Court is invoked under the Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, § 403(a)(3), 116 Stat. 114.

STATEMENT

This case presents a facial challenge to the constitutionality of the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 81. A three-judge panel of the District Court for the District of Columbia held that several provisions of BCRA violate the First Amendment to the Constitution, while sustaining other BCRA provisions against various constitutional challenges. The district court also held that the plaintiffs' challenges to certain BCRA provisions are not justiciable in this suit. Congress has vested this Court with direct appellate jurisdiction over the district court's decision. See BCRA § 403(a)(3), 116 Stat. 114.

Appellants challenge various rulings of the district court that (a) rejected some of appellants' constitutional challenges on the merits, or (b) held another of their claims to be non-justiciable. Appellants also challenge (c) the district court's denial of appellants' post-judgment motion to make the court's injunction expressly applicable to activities occurring outside the District of Columbia, and (d) the intervention in this litigation, pursuant to Section 403(b) of BCRA (116 Stat. 114), of six Members of Congress seeking to defend the constitutionality of the statute. As of this date, seven other jurisdictional statements arising out of the same district court judgment are pending before this Court. See *Mitch McConnell, United States Senator* v. *Federal Election Commission*, No. 02-1674; *National Rifle Association* v. *Federal Election Commission*, No. 02-1675; *Federal Election Commission* v. *Mitch*

McConnell, United States Senator, No. 02-1676 (see note 1, *supra*); *John McCain, United States Senator* v. *Mitch McConnell, United States Senator*, No. 02-1702; *Republican National Committee* v. *Federal Election Commission*, No. 02-1727; *American Civil Liberties Union* v. *Federal Election Commission*, No. 02-1734; *Victoria Jackson Gray Adams* v. *Federal Election Commission*, No. 02-1740.

DISCUSSION

Under Section 403(a)(3) of BCRA, the final decision of the district court in this case is "reviewable only by appeal directly to the Supreme Court of the United States." 116 Stat. 114. Pursuant to Section 403(a)(4) of BCRA, this Court is directed "to advance on the docket and to expedite to the greatest possible extent the disposition of the * * * appeal." 116 Stat. 114. In addition to filing our own jurisdictional statement (see note 1, *supra*) to appeal the district court's rulings declaring certain provisions of BCRA to be invalid, appellees will defend on appeal those provisions of the statute that were sustained against appellants' constitutional challenges. Appellees agree, however, that appellants' jurisdictional statement identifies substantial questions of federal law and that this Court should note probable jurisdiction over the appeal.[2]

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[2] On May 23, 2003, appellees filed a motion for expedited briefing schedule applicable to all then-pending appeals (see pp. 2-3, *supra*) from the district court's judgment in this case. That briefing schedule should also be made applicable to the instant appeal.

CONCLUSION

The Court should note probable jurisdiction.

Respectfully submitted.

THEODORE B. OLSON
Solicitor General

ROBERT D. MCCALLUM, JR.
Assistant Attorney General

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Deputy Solicitor General

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341